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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA,
16 v.
17 YAN FENG,
18 DEFENDANT.

19 No. CR 16-00378-001 MMC

20 DEFENDANT'S SENTENCING
21 MEMORANDUM

22 **Court:** Courtroom 7, 19th Floor

23 **Hearing Date:** November 30, 2016

24 **Hearing Time:** 2:15 PM

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26 INTRODUCTION

27 A mentally ill man, tortured by voices in his head, lit a door on fire. There is no question
28 that he is competent to have entered a plea to the general intent crime to which he plead guilty --
29 mental illness is not a defense to general intent federal crimes. His criminal culpability, however,
30 must be viewed in the context of his impairments. Balancing the seriousness of the offense
31 against the unique characteristics of this offender, the appropriate sentence is a term near the
32 high-end of the guideline range: 28 months.

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DISCUSSION

2 “The defendant has a possible undiagnosed mental health condition that led to the voices
3 in his head, which resulted in the commission of the crime.” *PSR* pg. 12 at 68. That is partially
4 correct. As correctly reported by the government, Dr. Scott Lines diagnosed Mr. Feng with a
5 psychotic disorder, most likely a “schizophrenia spectrum disorder.” *See Gov’t Status Report*
6 *filed Sept. 28, 2016* at 2:7. The Bureau of Prisons agreed, concluding that Mr. Feng was
7 suffering from a mental disease. *Id.* at 3:5; *see also Appendix A, BOP report at 9:* “Diagnosis.”

8 Notably, however, the BOP opined that Mr. Feng presented no substantial risk of bodily
9 injury to another person or serious damage to property to another. *Id.*, *Status Report*. at 3:5-8.

The assumption by the Chinese Consulate, the press, and perhaps the U.S. government at the outset of the case was that this episode was a politically-motivated protest by a Chinese national. In reality, this was the sad attempt by a tortured man to deal with untreated mental illness. Mr. Feng had struggled to deal with the voices that had berated him for some time. Mr. Feng reported to undersigned counsel that he had, in fact, called the Consulate before the event to attempt to seek help in the “surveillance” he was suffering. In many respects, this offense is best characterized as an extraordinarily misguided attempt to get help.

17 Notably, and importantly, Mr. Feng has repeatedly, clearly, and emphatically accepted
18 responsibility for his crime. Indeed, as reported in the PSR, the case was in fact “broke” when
19 Mr. Feng himself called the Daly City Police Department and candidly admitted to setting the
20 fire. *PSR* at ¶¶ 7-8. After issues regarding competency were resolved in the magistrate court, Mr.
21 Feng entered a guilty plea at his very first appearance before this Court. *See Docket Entry #4.*

Neither the government nor the defense underestimate the impact of this offense on the victim, the Chinese consulate. However, both parties and the Office of Probation agree that the appropriate custodial sentence is an in-guideline custodial term.

25 The defense departs from Probation in the proposed recommendation. The appropriate
26 custodial term is 28 months. That term is towards the high end of the 24 to 30 month guideline

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1 range. It is, however, sufficient to meet the goals of the Sentencing Reform Act. An additional
2 two months of incarceration is unnecessary to punish a man with no real criminal history, who
3 has completely and fully admitted responsibility for his crime, and who faces the very real
4 danger of additional and serious collateral consequences from this offense. *See PSR* at 4 par. 11
5 (“As a result, there may be concerns for the defendant’s safety should he return to China.”)

6 Notably, Probation has specifically identified Mr. Feng’s mental illness as a potential
7 basis to vary *below* the advisory guideline range. *See PSR* at 12 ¶ 68. While the defense does not
8 seek that variance, that factor is a compelling reason to impose a custodial term of 28 months,
9 slightly below the maximum guideline range.

10 Finally, and most importantly, a custodial term of 28 months is sufficient to protect the
11 community. The parties and Probation agree to conditions of supervised release that include
12 substance abuse and mental health treatment. *See PSR Recommendation* at 1 and 2. Mr. Feng has
13 also agreed to a stay-away provision from the Chinese Consulate, without the prior approval of
14 the Office of Probation. *See id.* at 5. With this supervision and with proper mental health
15 treatment, Mr. Feng will pose no danger to himself or to the community.

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CONCLUSION

For the foregoing reasons, this Court should impose a custodial term near the top of the guideline range: twenty-eight months. The Court should also impose the conditions of supervised release urged by the government and Probation, which will ensure that – if he is not deported – Mr. Feng will receive needed mental health counselling.

Respectfully submitted,

Dated: November 22, 2016

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Northern District of California

/S/
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DEF. SENT. MEM.
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